

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT COOPER,

Plaintiff,

-against-

THE CITY OF NEW YORK; Police Officer  
MICHAEL WALSH, Tax No. 945089; Police  
Officer JERMAINE TAYLOR, Tax No. 937613;  
Police Officer ANGELO PIZZARRO, Shield No.  
29275; and Police Officers JOHN and JANE  
DOE 1 through 10, individually and in their official  
capacities (the names John and Jane Doe being  
fictitious, as the true names are presently  
unknown),

Defendants.

**DECLARATION OF TOBIAS  
E. ZIMMERMAN IN SUPPORT  
OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

No. 14-CV-1761 (RJD) (RML)

**TOBIAS E. ZIMMERMAN** declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct to the best of his information, knowledge and belief:

1. I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, attorney for Defendants City of New York and Police Officers Michael Walsh, Jermaine Taylor, and Angelo Pizzarro.<sup>1</sup> As such, I am familiar with the facts stated below and submit this declaration to place the relevant documents on the record in support of the Defendants' Motion for Summary Judgment.

2. **Annexed hereto as Exhibit "A"** is a true and correct copy of the Complaint filed in the United States District Court for the Eastern District of New York on March 17, 2014, pur-

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<sup>1</sup> Each of the officers was subsequently promoted: Walsh to Detective 3rd grade, Taylor to Sergeant, and Pizzarro to Detective Specialist. They are referred to herein by their ranks at the time of the events at issue.

porting to state claims against Defendants under 42 U.S.C. § 1983 for, *inter alia*, false arrest, malicious prosecution, and denial of right to fair trial. The document was downloaded from the Court's CM/ECF system without the ECF header to avoid conflicting with the header that will be automatically added when it is filed as part of Defendants' Motion for Summary Judgment.

3. **Annexed hereto as Exhibit "B"** is a true and correct copy of excerpts from the transcript of the deposition of Police Officer Angelo Pizzarro, Defendant herein, taken by Plaintiffs' counsel on October 8, 2015. In the portions of his deposition included in the exhibit, Officer Pizzarro testified that he was assigned to Police Service Area # 1 where he worked with Officers Taylor and Walsh, and described how he received a radio call from Officer Walsh directing him to the location where he found a firearm lying in the grass.

4. **Annexed hereto as Exhibit "C"** is a true and correct copy of excerpts from the transcript of the deposition of Police Officer Jermaine Taylor, Defendant herein, taken by Plaintiffs' counsel on July 20, 2016. In the portions of his deposition included in the exhibit, Officer Taylor testified about how he and Officer Walsh pursued Plaintiff on January 12, 2012; how he saw Plaintiff toss an object into the grass; and how he conveyed relevant information to the Kings County District Attorney's Office (KCDA).

5. **Annexed hereto as Exhibit "D"** is a true and correct copy of excerpts from the transcript of the deposition of Police Officer Michael Walsh, Defendant herein, taken by Plaintiffs' counsel on August 4, 2016. In the portions of his deposition included in the exhibit, Officer Walsh testified about how he and Officer Taylor pursued Plaintiff on January 12, 2012; how he saw Plaintiff toss an object he identified as a gun into the grass and radioed an alert.

6. **Annexed hereto as Exhibit "E"** is a true and correct copy of excerpts from the transcript of the deposition of Plaintiff Robert Cooper taken by Defendants' counsel in connec-

tion with this action on March 4, 2015. In the portions of his deposition included in the exhibit, Plaintiff testified about being pursued by Officers Walsh and Taylor; how he threw his black scarf in the grass; and that he was detained on Rikers Island for six days following arraignment.

7. **Annexed hereto as Exhibit “F”** is a true and correct copy of the charging instrument prepared by the Kings County District Attorney’s Office on or about January 13, 2012, charging Plaintiff Robert Cooper with, *inter alia*, a violation of New York Penal Law Section 265.01(3) (Criminal Possession of a Weapon in the Fourth Degree). This document was obtained from the Criminal Court of the City of New York, County of Kings using the release for records sealed pursuant to N.Y. C.P.L. § 160.50 that was provided by Plaintiff in connection with this action, and was initially produced to Plaintiff bearing Bates number D018 as part of Defendants’ Initial Disclosures served on or about September 9, 2014.

8. **Annexed hereto as Exhibit “G”** is a true and correct copy of a New York City Police Department Online Prisoner Arraignment form (“OLPA”) showing the dates and times of Plaintiff’s arrest and arraignment. This document was created and maintained by NYPD in the normal course of business, and was initially produced to Plaintiff bearing Bates numbers D006 to D007 as part of Defendants’ Initial Disclosures served on or about September 9, 2014.

9. **Annexed hereto as Exhibit “H”** is a true and correct copy of a Laboratory Report prepared by NYPD Laboratory—Firearms Analysis Section, and concerning the firearm that was recovered by the Defendant officers on January 12, 2012. The report notes that the firearm itself was tested as “Operable”. This document was created and maintained by NYPD in the normal course of business, and was initially produced to Plaintiff bearing Bates number DEF0498 on June 26, 2015.

10. **Annexed hereto as Exhibit “I”** is a true and correct copy of the Decision And Order dated November 25, 2013, by the Hon. George A. Grasso, Acting Supreme Court Justice, in the case *People v. Robert Cooper*, No. 2012KN003462. This document is cited in Defendants’ moving papers as “Grasso Memo I”. In the Grasso Memo I, the criminal court describes the suppression hearing held on November 14, 15, and 19, 2013, in which the court considered and denied the criminal defendant’s (*i.e.*, Plaintiff’s) motion to suppress the firearm found by the Defendant officers on January 12, 2012. This document was obtained from the Criminal Court of the City of New York, County of Kings using the release for records sealed pursuant to N.Y. C.P.L. § 160.50 that was provided by Plaintiff in connection with this action, and was initially produced to Plaintiff bearing Bates numbers D047 to D052 as part of Defendants’ Initial Disclosures served on or about September 9, 2014.

11. **Annexed hereto as Exhibit “J”** is a true and correct copy of the Decision And Order dated December 12, 2013, by the Hon. George A. Grasso, Acting Supreme Court Justice, in the case *People v. Robert Cooper*, No. 2012KN003462. This document is cited in Defendants’ moving papers as “Grasso Memo II”. In the Grasso Memo II, the criminal court describes the re-opened suppression hearing held on December 4, 2013, in which the court heard additional testimony from Officer Pizzarro regarding the memo books he had previously claimed were lost. The criminal court reversed its earlier decision and suppressed the firearm. This document was obtained from the Criminal Court of the City of New York, County of Kings using the release for records sealed pursuant to N.Y. C.P.L. § 160.50 that was provided by Plaintiff in connection with this action, and was initially produced to Plaintiff bearing Bates numbers D030 to D046 as part of Defendants’ Initial Disclosures served on or about September 9, 2014.

12. **Annexed hereto as Exhibit “K”** is a true and correct copy of the transcript of the proceedings held on December 16, 2013, before the Honorable George Grasso, Acting Supreme Court Justice, in the case *People v. Robert Cooper*, No. 2012KN003462. The transcripts records the People’s motion to dismiss the charges against Plaintiff Robert Cooper. This document was obtained from the official court reporter of the Criminal Court of the City of New York, County of Kings using the release for records sealed pursuant to N.Y. C.P.L. § 160.50 that was provided by Plaintiff in connection with this action, and was initially produced to Plaintiff on or about November 19, 2014, bearing Bates numbers DEF0358 to DEF0361 as part of Defendants’ response to Plaintiff’s First Set of Interrogatories and Requests for Production of Documents

13. **Annexed hereto as Exhibit “L”** is a true and correct copy of the Complaint filed in the United States District Court for the Eastern District of New York on January 28, 2011, in the case *Robert Cooper v. City of New York, et al.*, No. 11-CV-0452 (ENV) (JMA). This copy was downloaded from the Court’s CM/ECF system without the ECF header to avoid conflicting with the header that will be automatically added when it is filed as part of Defendants’ Motion for Summary Judgment.

14. **Annexed hereto as Exhibit “M”** is a true and correct copy of the Stipulation of Settlement And Order Of Dismissal endorsed by the Hon. Eric N. Vitaliano, United States District Judge, on March 15, 2012 in the case *Robert Cooper v. City of New York, et al.*, No. 11-CV-0452 (ENV) (JMA). This copy was downloaded from the Court’s CM/ECF system without the ECF header to avoid conflicting with the header that will be automatically added when it is filed as part of Defendants’ Motion for Summary Judgment.

15. **Annexed hereto as Exhibit “N”** is a true and correct copy of the General Release executed by Plaintiff on February 28, 2012, as part of the settlement of the case *Robert Cooper v.*

*City of New York, et al.*, No. 11-CV-0452 (ENV) (JMA). This document was received and maintained by the New York City Law Department in the normal course of business as part of the case file generated in connection with that litigation. Plaintiff's date of birth and social security number have been redacted pursuant to Rule 5.2 of the Federal Rules of Civil Procedure.

16. **Annexed hereto as Exhibit "O"** is a true and correct copy of the Complaint filed in the United States District Court for the Eastern District of New York on October 6, 2011, in the case *Robert Cooper v. City of New York, et al.*, No. 11-CV-4873 (SJ) (RER). This copy was downloaded from the Court's CM/ECF system without the ECF header to avoid conflicting with the header that will be automatically added when it is filed as part of Defendants' Motion for Summary Judgment.

17. **Annexed hereto as Exhibit "P"** is a true and correct copy of the Stipulation of Settlement And Order Of Dismissal endorsed by the Hon. Sterling Johnson, Jr., United States District Judge, on March 13, 2012 in the case *Robert Cooper v. City of New York, et al.*, No. 11-CV-4873 (SJ) (RER). This copy was downloaded from the Court's CM/ECF system without the ECF header to avoid conflicting with the header that will be automatically added when it is filed as part of Defendants' Motion for Summary Judgment.

18. **Annexed hereto as Exhibit "Q"** is a true and correct copy of the General Release executed by Plaintiff on February 28, 2012, as part of the settlement of the case *Robert Cooper v. City of New York, et al.*, No. 11-CV-4873 (SJ) (RER). This document was received and maintained by the New York City Law Department in the normal course of business as part of the case file generated in connection with that litigation. Plaintiff's date of birth and social security number have been redacted pursuant to Rule 5.2 of the Federal Rules of Civil Procedure.

19. **Annexed hereto as Exhibit “R”** is a true and correct copy of the Complaint filed in the United States District Court for the Eastern District of New York on January 18, 2013, in the case *Robert Cooper v. City of New York, et al.*, No. 13-CV-0325 (JG) (RER). This copy was downloaded from the Court’s CM/ECF system without the ECF header to avoid conflicting with the header that will be automatically added when it is filed as part of Defendants’ Motion for Summary Judgment.

20. **Annexed hereto as Exhibit “S”** is a true and correct copy of the Stipulation of Settlement And Order Of Dismissal signed by Plaintiff’s counsel on or about September 18, 2013, in the case *Robert Cooper v. City of New York, et al.*, No. 13-CV-0325 (JG) (RER). This document was received and maintained by the New York City Law Department in the normal course of business as part of the case file generated in connection with that litigation, and was initially produced to Plaintiff bearing Bates numbers D077 to D080 as part of Defendants’ Initial Disclosures served on or about September 9, 2014.

21. **Annexed hereto as Exhibit “T”** is a true and correct copy of the General Release executed by Plaintiff on September 9, 2013, as part of the settlement of the case *Robert Cooper v. City of New York, et al.*, No. 13-CV-0325 (JG) (RER). This document was received and maintained by the New York City Law Department in the normal course of business as part of the case file generated in connection with that litigation, and was initially produced to Plaintiff bearing Bates numbers D081 to D082 as part of Defendants’ Initial Disclosures served on or about September 9, 2014. Plaintiff’s date of birth and social security number have been redacted pursuant to Rule 5.2 of the Federal Rules of Civil Procedure.

22. **Annexed hereto as Exhibit “U”** is a true and correct copy of Plaintiff’s Response to Defendants[’] First Set of Requests to Admit, which were served upon Defendants’ counsel

herein on July 7, 2015,<sup>2</sup> and in which Plaintiff admits, *inter alia*, that the Stipulation of Settlement and General Release executed in connection with the settlement of the case *Robert Cooper v. City of New York, et al.*, No. 13-CV-0325 (JG) (RER) are binding and enforceable.

Dated: New York, New York  
July 24, 2017

By: \_\_\_\_\_  
Tobias E. Zimmerman  
*Senior Counsel*  
Special Federal Litigation Division

cc: Robert Marinelli, Esq. (**via Email**)  
*Attorney for Plaintiffs*

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<sup>2</sup> The document bears the erroneous date “June 9, 2014”. Defendants’ Requests to Admit were served on June 11, 2015, and these responses were emailed to defense counsel on July 7, 2015.